



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/Sub.2/AC.4/1993/4
8 June 1993

ENGLISH
Original: ENGLISH/SPANISH

COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of Discrimination
and Protection of Minorities
Working Group on Indigenous Populations
Eleventh session
19-30 July 1993
Item 5 of the provisional agenda

REVIEW OF DEVELOPMENTS PERTAINING TO THE PROMOTION AND PROTECTION
OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS OF INDIGENOUS POPULATIONS,
INCLUDING ECONOMIC AND SOCIAL RELATIONS BETWEEN INDIGENOUS PEOPLES
AND STATES

Note by the Secretary-General

Information received from Governments

CONTENTS

	<u>Page</u>
Introduction	2
Spain	2

Introduction

1. By its resolution 1982/34 of 7 May 1982, the Economic and Social Council authorized the Sub-Commission on Prevention of Discrimination and Protection of Minorities to establish annually a working group on indigenous populations to review developments pertaining to the promotion and protection of the human rights and fundamental freedoms of indigenous populations, including information requested by the Secretary-General annually, and to give special attention to the evolution of standards concerning the rights of indigenous populations.

2. The Sub-Commission, in its resolution 1992/33 of 27 August 1992, requested the Secretary-General to transmit the report of the Working Group to Governments. The Commission on Human Rights made the same request in its resolution 1993/31 of 5 March 1993. In accordance with these resolutions, appropriate communications were sent. The present document contains replies received as of 1 June 1993 from Governments pertaining to the promotion and protection of the human rights and fundamental freedoms of indigenous populations. Further replies, if any, will be included in addenda to this document.

Spain

[10 May 1993]
[Original: Spanish]

INFORMATION NOTE

Fund for the Development of the Indigenous Peoples

1. During the Second Ibero-American Summit, held in Madrid on 23-24 July 1992, the participating Heads of State and Government witnessed the signing of the Agreement establishing the Fund for the Development of the Indigenous Peoples of Latin America and the Caribbean, set up pursuant to the initiative put forward at the First Summit, held at Guadalajara, Mexico, in 1991, by Mr. Jaime Paz Zamora, President of the Republic of Bolivia.

2. The participating Heads of State and Government pledged to take the necessary steps to ensure the speedy implementation of the Agreement and the follow-up of development projects envisaged by the Fund, on the understanding that that was the best way for the countries of the Ibero-American community to participate in the celebration in 1993 of the International Year for the World's Indigenous People proclaimed by the United Nations General Assembly.

3. The Agreement establishing the Fund (see annex) was signed on 24 July 1992 by Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Portugal, Spain and Uruguay. Peru signed it on 1 October. The text was deposited with the United Nations Secretariat by the representatives of Spain and Bolivia on 16 September 1992.

4. At an intergovernmental meeting held in Washington, D.C. on 25 September 1992 to agree on arrangements for the start-up of the Indigenous Fund, the representative of the Government of Mexico was appointed Chairman of the Interim Committee. Spain pledged an immediate cash contribution to enable the Fund to begin operations and to provide for its secretariat. That contribution has already been paid.

5. At a meeting held in Madrid on 11 January 1993 in order to transfer from Spain to Brazil the pro tempore secretariat for the Third Ibero-American Summit, it emerged that, as of at that date, only four countries (Bolivia, Ecuador, Mexico and Spain) had issued letters of intent indicating their commitment to support the Indigenous Fund; a minimum of eight are required in order to bring into effect the regional technical cooperation of the Inter-American Development Bank.

Annex

AGREEMENT ESTABLISHING THE FUND FOR THE DEVELOPMENT OF THE
INDIGENOUS PEOPLES OF LATIN AMERICA AND THE CARIBBEAN*

The High Contracting Parties,

Meeting in the city of Madrid, Spain, on the occasion of the Second Ibero-American Summit, held on 23-24 July 1992,

Recalling the terms of the Universal Declaration of Human Rights, a/ the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, b/

Considering the international norms set forth in the Indigenous and Tribal Peoples Convention of the International Labour Organisation, adopted by the International Labour Conference in 1989,

Hereby adopt, in the presence of representatives of indigenous peoples of the region, the following Agreement establishing the Fund for the Development of the Indigenous Peoples of Latin America and the Caribbean.

Article 1

Purpose and functions

1.1 Purpose. The purpose of the Fund for the Development of the Indigenous Peoples of Latin America and the Caribbean, hereinafter referred to as the "Indigenous Fund", is to establish a mechanism for supporting the processes of self-development of indigenous peoples, communities and organizations of Latin America and the Caribbean, hereinafter referred to as "indigenous peoples".

The term "indigenous peoples" shall mean indigenous peoples descended from populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions. In addition, self-identification as indigenous shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Agreement apply.

The use of the term "peoples" in this Agreement shall not be construed as having any implications as regards the rights which may attach to the term under international law.

* Translation by the United Nations Secretariat.

1.2 Functions. In order to achieve the purpose set forth in paragraph 1.1 of this article, the Indigenous Fund shall have the following basic functions:

- (a) To provide a forum for dialogue to reach agreement on the formulation of development policies, technical assistance operations and programmes and projects of interest to indigenous peoples, with the participation of Governments of States of the region, Governments of other States, agencies providing resources and indigenous peoples themselves;
- (b) To channel financial and technical resources to priority projects and programmes agreed upon with indigenous peoples, making sure that they help create conditions for the self-development of those peoples;
- (c) To provide training resources and technical assistance to support institution-building, management capacity, human resources training, information resources and research for indigenous peoples and their organizations.

Article 2

Members and resources

2.1 Members. The members of the Indigenous Fund shall be those States which deposit the instrument of ratification with the Secretariat of the United Nations, in accordance with their domestic constitutional requirements and in conformity with paragraph 14.1 of article 14 of this Agreement.

2.2 Resources. The resources of the Indigenous Fund shall consist of contributions by member States, contributions by other States, public or private multilateral, bilateral or national agencies and institutional donors and net income generated by the activities and investments of the Indigenous Fund.

2.3 Instruments of contribution. The instruments of contribution shall be protocols signed by each member State and establishing their respective commitments to contribute resources to the Indigenous Fund to form the capital of that Fund, in accordance with paragraph 2.4 below. Other contributions shall be governed by the provisions of article 5 of this Agreement.

2.4 Nature of contributions. Contributions to the Indigenous Fund may be made in foreign currency, local currency, technical assistance or in kind, in accordance with the rules and regulations laid down by the General Meeting. Contributions in local currency shall be subject to maintenance of their value and exchange rate.

Article 3

Organizational structure

3.1 Organs of the Indigenous Fund. The organs of the Indigenous Fund shall be the General Meeting and the Board of Directors.

3.2 General Meeting

(a) Composition. The General Meeting shall be composed of:

- (i) One Government-accredited delegate for each member State; and
- (ii) One indigenous peoples' delegate for each State of the region that is a member of the Indigenous Fund, accredited by his Government following the relevant consultations with the indigenous organizations of that State.

(b) Decisions

- (i) Decisions shall be taken by unanimous affirmative vote of delegates of States of the region that are members of the Indigenous Fund, together with a majority of affirmative votes of representatives of other member States and a majority of affirmative votes of delegates of indigenous peoples;
- (ii) On matters affecting indigenous peoples of one or more countries, the affirmative vote of their delegates shall also be required.

(c) Rules of procedure. The General Meeting shall lay down its rules of procedure and such other rules and regulations as it deems necessary for the functioning of the Indigenous Fund.

(d) Functions. The General Meeting shall have the following functions, among others:

- (i) To formulate the overall policy of the Indigenous Fund and to adopt such measures as are necessary for the fulfilment of its objective;
- (ii) To approve the basic criteria for the preparation of plans, projects and programmes to be supported by the Indigenous Fund;
- (iii) To approve membership status, in accordance with the stipulations of this Agreement and such rules and regulations as may be established by the General Meeting;

- (iv) To approve the annual programme and budget and the periodic financial statements of the Indigenous Fund;
- (v) To elect members of the Board of Directors referred to in paragraph 3.3 and to delegate to the Board such powers as may be necessary for the functioning of the Indigenous Fund;
- (vi) To approve the technical and administrative structure of the Indigenous Fund and appoint the Technical Secretary;
- (vii) To approve special agreements enabling non-member States, as well as public and private organizations, to cooperate with or participate in the Indigenous Fund;
- (viii) To approve any amendments to the Agreement establishing the Fund and submit them to the member States for ratification, where appropriate;
- (ix) To terminate the operations of the Indigenous Fund and appoint liquidators.

(e) Meetings. The General Meeting shall hold a regular meeting once a year and shall hold special meetings, whenever necessary, on its own initiative or at the request of the Board of Directors, in accordance with the procedures established in the rules of procedure of the General Meeting.

3.3 Board of Directors

(a) Composition. The Board of Directors shall be composed of nine members elected by the General Meeting and representing in equal proportions the Governments of States of the region that are members of the Indigenous Fund, the indigenous peoples of those same member States and the Governments of other member States. Members of the Board of Directors shall serve for a two-year term, preferably following a system of rotation.

(b) Decisions

- (i) Decisions shall be taken by unanimous affirmative vote of delegates of States of the region that are members of the Indigenous Fund, together with a majority of affirmative votes of representatives of other member States and a majority of affirmative votes of delegates of indigenous peoples;
- (ii) In order to be valid, decisions of the Board of Directors which concern a specific country must also be approved, through the most appropriate mechanisms, by the Government of the State concerned and by the recipient indigenous people.

(c) Functions. In accordance with the rules, regulations and guidelines approved by the General Meeting, the Board of Directors shall have the following functions:

- (i) To propose to the General Meeting supplementary rules and regulations for fulfilling the objectives of the Indigenous Fund, including the rules of procedure of the Board;
- (ii) To appoint a Chairman from among its members, using the voting procedures established in paragraph 3.3 (b) above;
- (iii) To take the measures necessary for the implementation of this Agreement and of the decisions of the General Meeting;
- (iv) To evaluate the technical and administrative needs of the Indigenous Fund and propose the corresponding measures to the General Meeting;
- (v) To administer the resources of the Indigenous Fund and authorize the allocation of credits;
- (vi) To submit to the General Meeting for consideration the proposed annual programme and budget and the periodic financial statements of the Indigenous Fund;
- (vii) To consider and approve programmes and projects eligible for support from the Indigenous Fund, in accordance with its objectives, rules and regulations;
- (viii) To arrange for and provide technical assistance and the support required for the preparation of projects and programmes;
- (ix) To promote and establish mechanisms for consultation and agreement among member States of the Indigenous Fund, cooperating entities and recipients;
- (x) To propose to the General Meeting the appointment of the Technical Secretary of the Indigenous Fund;
- (xi) To suspend the operations of the Indigenous Fund temporarily until such time as the General Meeting has had an opportunity to examine the situation and take the relevant measures;
- (xii) To exercise the other powers conferred on it by this Agreement and to perform such functions as may be assigned to it by the General Meeting.

(d) Meetings. The Board of Directors shall meet at least three times a year, in April, August and December, and shall hold special meetings whenever it deems necessary.

Article 4

Administration

4.1 Technical and administrative structure

(a) The General Meeting and the Board of Directors shall determine and establish the technical and administrative management structure of the Indigenous Fund, in accordance with articles 3.2 (d) (vi) and 3.3 (c) (iv) and (x). This structure, hereinafter referred to as the Technical Secretariat, shall be made up of persons who are highly qualified in terms of professional training and expertise; this staff shall consist of no more than 10 persons - six professionals and four administrative staff. Additional staffing requirements for projects may be met by recruiting temporary staff.

(b) Should it deem necessary, the General Meeting may expand or alter the composition of the Technical Secretariat.

(c) The Technical Secretariat shall function under the direction of a Technical Secretary appointed in accordance with the provisions of paragraph (a) above.

4.2 Management contracts. The General Meeting may authorize the signing of management contracts with entities that have the resources and expertise to undertake the technical, financial and administrative management of the resources and activities of the Indigenous Fund.

Article 5

Cooperating entities

5.1 Cooperation with entities which are not members of the Indigenous Fund. The Indigenous Fund may sign special agreements, approved by the General Meeting, allowing non-member States, as well as public and private, local, national and international organizations, to contribute to the capital of the Fund, participate in its activities, or both.

Article 6

Operations and activities

6.1 Organization of operations. The Indigenous Fund shall organize its operations according to a system of classification by programme and project area, in order to facilitate the concentration of administrative and financial efforts and the programming by means of periodic financial statements that will permit the fulfilment of its specific objectives.

6.2 Recipients. The direct, exclusive recipients of programmes and projects supported by the Indigenous Fund shall be the indigenous peoples of

Latin American and Caribbean States which are members of the Fund or have signed a special agreement with the Fund enabling their country's indigenous peoples to participate in its activities, in accordance with article 5.

6.3 Criteria for eligibility and priority. The General Meeting shall adopt specific criteria for determining the eligibility of applicants to and recipients of the Indigenous Fund in an interdependent manner, taking into account the diversity of its recipients, and for establishing priorities among programmes and projects.

6.4 Funding conditions.

(a) Taking into account the diverse and particular characteristics of the potential recipients of programmes and projects, the General Meeting shall establish flexible parameters to be used by the Board of Directors in determining funding modalities and establishing conditions for the execution of each programme and project, in consultation with the parties concerned.

(b) In accordance with the criteria mentioned, the Indigenous Fund shall grant non-reimbursable resources, credits, guarantees or other appropriate funding modalities, or combinations thereof.

Article 7

Evaluation and follow-up

7.1 Evaluation of the Indigenous Fund. The General Meeting shall periodically evaluate the overall functioning of the Indigenous Fund, according to whatever criteria and methods it deems appropriate.

7.2 Programme and project evaluation. The progress of programmes and projects shall be evaluated by the Board of Directors. Special consideration shall be given to requests to that end made by the recipients of such programmes and projects.

Article 8

Withdrawal of members

8.1 Right to withdraw. Any member State may withdraw from the Indigenous Fund by giving written notice to the Chairman of the Board of Directors, who shall notify the Secretariat of the United Nations accordingly. Withdrawal shall take effect one year from the date on which such notification is received.

8.2 Liquidation of accounts.

(a) Member States' contributions to the Indigenous Fund shall not be refunded in the event of their withdrawal.

(b) A member State which has withdrawn from the Indigenous Fund shall remain liable for any sums owing to the Fund and for any obligations entered into with it prior to the date of termination of its membership.

Article 9

Termination of operations

9.1 Termination of operations. The Indigenous Fund may terminate its operations by decision of the General Meeting, which shall appoint liquidators and decide on the settlement of debts and the proportional distribution of assets among its members.

Article 10

Legal personality

10.1 Legal status

(a) The Indigenous Fund shall have legal personality and full powers to:

- (i) Conclude contracts;
- (ii) Acquire and transfer movable and immovable property;
- (iii) Accept and grant loans and donations, offer guarantees, buy and sell securities, invest funds not committed for its operations and carry out the financial transactions necessary for the fulfilment of its purpose and functions;
- (iv) Bring legal or administrative proceedings and appear in court;
- (v) Take any other action required for the performance of its functions and the fulfilment of the objectives of this Agreement.

(b) The Fund shall exercise these powers in accordance with the legal requirements of the member State in whose territory it is conducting its operations and activities.

Article 11

Immunities, exemptions and privileges

11.1 Granting of immunities. Member States shall take, in accordance with their legal system, the measures required to confer on the Indigenous Fund the immunities, exemptions and privileges necessary for the fulfilment of its objectives and the performance of its functions.

Article 12

Amendments

12.1 Amendments to the Agreement. This Agreement may be amended only by unanimous agreement of the General Meeting, subject, where necessary, to ratification by the member States.

Article 13

General provisions

13.1 Headquarters of the Fund. The headquarters of the Indigenous Fund shall be at La Paz, Bolivia.

13.2 Depositaries. Each member State shall designate its central bank as depositary, so that the Indigenous Fund can maintain its disposable and other assets in the currency of that member State. If the member State does not have a central bank, it shall designate, in agreement with the Indigenous Fund, some other institution for that purpose.

Article 14

Final provisions

14.1 Signature and acceptance. This Agreement shall be deposited with the Secretariat of the United Nations, where it shall remain open for signature by representatives of Governments of States of the region and other States wishing to become members of the Indigenous Fund.

14.2 Entry into force. This Agreement shall enter into force when the instrument of ratification has been deposited, in accordance with paragraph 14.1 of this article, by at least three States of the region.

14.3 Denunciation. Any member State which has ratified this Agreement may denounce it by sending official notification to the Secretary-General of the United Nations. The denunciation shall take effect one year after the date of its registration.

14.4 Commencement of operations

(a) The Secretary-General of the United Nations shall convene the first meeting of the General Meeting of the Indigenous Fund as soon as this Agreement enters into force in accordance with paragraph 14.2.

(b) At its first meeting, the General Meeting shall take the necessary measures to appoint the Board of Directors, as provided in paragraph 3.3 (a) of article 3, and to determine the date on which the Indigenous Fund is to commence its operations.

Article 15

Transitional provisions

15.1 Interim Committee. Once this Agreement has been signed by five States of the region, and without this giving rise to obligations for States that have not ratified it, an Interim Committee shall be established with composition and functions similar to those described for the Board of Directors in paragraph 3.3 of article 3 of this Agreement.

15.2 Under the direction of the Interim Committee, a Technical Secretariat shall be established as indicated in paragraph 4.1 of article 4 of this Agreement.

15.3 The activities of the Interim Committee and the Technical Secretariat shall be funded by voluntary contributions from States that have signed this Agreement and by contributions from other States and entities, through such technical cooperation and other forms of assistance as States or other entities may arrange with international organizations.

DONE in the city of Madrid, Spain, in one original dated 24 July 1992, the Spanish, Portuguese and English texts being equally authentic.
